

THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

NO. 5:08-CV-403-FL

SMD SOFTWARE, INC., a North Carolina corporation; and SITELINK SOFTWARE, LLC, a North Carolina limited liability company, )  
Plaintiffs, )  
v. )  
EMOVE, INC., a Nevada corporation; and WEB TEAM ASSOCIATES, a Nevada corporation, )  
Defendants. )

JURY VERDICT FORM

2. Did *plaintiffs* establish by a preponderance of the evidence that one or more of the following descriptions of fact or representations of fact *about SiteLink-PC* in the 2005 Comparison Chart was false or misleading as of January, 2005?

<b>Benefit</b>	<b>SiteLink</b>	<b>webselfstorage</b>	<b>Jury Finding Yes or No</b>
Tech Support	First 120 days Free call for service, contract, price	<b>Free Online Support Free Live Chat</b>	<b>NO</b>
Reservations	No	<b>YES</b>	<b>NO</b>
Integrated Credit Cards	No	<b>YES (1.70%)</b>	<b>YES</b>
Upgrades	included with support	<b>FREE</b>	<b>NO</b>
Cost per License	\$1,199 and up	<b>ONLY \$44.95/month</b>	<b>NO</b>
Online Payments	No	<b>YES (FREE with Premier-CustomerClub)</b>	<b>YES</b>

***Proceed to Issue No. 3.***

3. Did plaintiffs establish by a preponderance of the evidence that one or more of the following descriptions of fact or representations of fact about SiteLink-PC or SiteLink Web Edition in the 2008 Comparison Chart was false or misleading as of January, 2008?

<b>Benefit</b>	<b>webselfstorage</b>	<b>SiteLink</b>	<b>Jury Finding Yes or No</b>
Cost per License	<input checked="" type="checkbox"/> <b>ONLY 44<sup>.95</sup> PER MO.</b>	\$3,000 – Windows \$350/Mo. Web	<b>YES</b>
Tech Support	<input checked="" type="checkbox"/> <b>FREE</b> PLUS Live Chat	For Service, Contract & Prices First 120 days Free	<b>NO</b>
Confirmed Reservations	<input checked="" type="checkbox"/> <b>YES</b>	🚫	<b>YES</b>
Fully Integrated Credit Cards	<input checked="" type="checkbox"/> <b>YES @1.70%</b>	🚫	<b>YES</b>
Upgrades	<input checked="" type="checkbox"/> <b>FREE</b>	▲ Only When Support Is Purchased	<b>YES</b>
Fully Integrated Tenant Insurance	<input checked="" type="checkbox"/> <b>YES</b>	🚫	<b>YES</b>
Fully Integrated Online Payments	<input checked="" type="checkbox"/> <b>YES</b>	🚫	<b>YES</b>
Fully Integrated Call Center Service	<input checked="" type="checkbox"/> <b>YES</b>	🚫	<b>YES</b>
Mobile Device Accessible	<input checked="" type="checkbox"/> <b>YES</b>	🚫	<b>NO</b>

*If you answered "Yes" as to any one or more of the statements set forth in Issue Nos. 1-3, proceed to Issue No. 4.*

*If you answered "No" as to each and every statement set forth in Issue Nos. 1-3, do not answer any additional Issues.*

4. Did *plaintiffs* establish by a preponderance of the evidence that SMD and/or SiteLink suffered injury as a result of any one or more of the description(s) of fact or representation(s) of fact in Issue Nos. 1-3 that you found false or misleading – or as a result of any group of such false or misleading statements or representations – contained within any *single* comparison chart?

Yes  No

*If you answered "Yes" to Issue No. 4, proceed to Issue No. 5.*

*If you answered "No" to Issue No. 4, do not answer any additional Issues.*

5. In what amount, if any, has SMD and/or SiteLink been injured by any such false or misleading statements?

1.7 Million Dollars

*Proceed to Issue No. 6.*

6. Did *plaintiffs* establish by a preponderance of the evidence that Web Team participated in the creation or development of the following comparison charts with knowledge or constructive knowledge that any one or more of the description(s) of fact or representation(s) of fact in Issue Nos. 1-3 that you found false or misleading were false or misleading?

a. The 2004 Comparison Chart

Yes  No

b. The 2005 Comparison Chart

Yes  No

c. The 2008 Comparison Chart

Yes  No

*Proceed to Issue No. 7.*

## **LANHAM ACT CLAIM**

7. Did *plaintiffs* establish by a preponderance of the evidence that any one or more of the description(s) of fact or representation(s) of fact in Issue Nos. 1-3 that you found false or misleading – or any group of such false or misleading statements or representations – contained within any *single* comparison chart, was material in that it was likely to influence the purchasing decisions of self-storage facility management software consumers?

Yes  No

***If you answered “Yes” to Issue No. 7, proceed to Issue No. 8.***

***If you answered “No” to Issue No. 7, proceed to Issue No. 12.***

8. Was any one or more of the description(s) of fact or representation(s) of fact you found false or misleading in Issue Nos. 1-3 and material in Issue No. 7:

- a. Literally false?

Yes  No

- b. Made by defendant(s) with intent to deceive?

Yes  No

***If you answered “Yes” for either Issue Nos. 8a or 8b proceed to Issue No. 9.***

***If you answered “No” to both Issue Nos. 8a and 8b, proceed to Issue No. 10.***

9. Did *defendants* establish by a preponderance of the evidence that any such false or misleading and material statement(s) did *not* actually deceive a substantial segment of self-storage facility management software consumers?

Yes  No

***If you answered “Yes” to Issue No. 9, proceed to Issue No. 12.***

***If you answered “No” to Issue No. 9, proceed to Issue No. 11.***

10. Did plaintiffs establish by a preponderance of the evidence that any such false or misleading and material statement(s) actually deceived a substantial segment of self-storage facility management software consumers?

Yes \_\_\_\_\_ No ✓

***If you answered “Yes” to Issue No. 10, proceed to Issue No. 11.***

***If you answered “No” to Issue No. 10, proceed to Issue No. 12.***

11. In what amount, if any, has eMove gained as a result of any such material, deceptive, and false or misleading statements?
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***Proceed to Issue No. 12.***

## **TORTIOUS PRODUCT DISPARAGEMENT CLAIM**

12. Did plaintiffs establish by a preponderance of the evidence that the 2004 Comparison Chart was distributed after July 14, 2005?

Yes \_\_\_\_\_ No

*If you answered "Yes" to Issue No. 12, proceed to Issue No. 13.*

*If you answered "No" to Issue No. 12, proceed to Issue No. 17.*

13. Did plaintiffs establish by a preponderance of the evidence that eMove and/or Web Team made any one or more of the description(s) of fact or representation(s) of fact you found false or misleading in Issue Nos. 1-3 with malice?

eMove: Yes \_\_\_\_\_ No \_\_\_\_\_

Web Team: Yes \_\_\_\_\_ No \_\_\_\_\_

*If you answered "Yes" as to one or both defendants in Issue No. 13, proceed to Issue No. 14.*

*If you answered "No" as to both defendants in Issue No. 13, do not answer any additional Issues.*

14. Did plaintiffs establish by *clear and convincing evidence* that:

- a. eMove made any one or more of the description(s) of fact or representation(s) of fact that you found to be false or misleading in Issue Nos. 1-3 with malice?

Yes \_\_\_\_\_ No \_\_\_\_\_

- b. Web Team made any one or more of the description(s) of fact or representation(s) of fact that you found to be false or misleading in Issue No. 3 only with malice?

Yes \_\_\_\_\_ No \_\_\_\_\_

***Proceed to Issue No. 15.***

15. Did plaintiffs establish by *clear and convincing evidence* that:

- a. eMove willfully or wantonly made any one or more of the description(s) of fact or representation(s) of fact that you found to be false or misleading in Issue Nos. 1-3 and, by a preponderance of the evidence, to be made with malice in Issue No. 13?

Yes \_\_\_\_\_ No \_\_\_\_\_

- b. Web Team willfully or wantonly made any one or more of the description(s) of fact or representation(s) of fact that you found to be false or misleading in Issue No. 3 only and, by a preponderance of the evidence, to be made with malice in Issue No. 13?

Yes \_\_\_\_\_ No \_\_\_\_\_

***Proceed to Issue No. 16.***

16. If you answered "Yes" as to a defendant in Issue Nos. 14 and/or 15 what amount of punitive damages, if any, does the jury award in its discretion against the defendant(s) for whom you answered "Yes" in response to Issue Nos. 14 and/or 15?

eMove: \_\_\_\_\_

Web Team: \_\_\_\_\_

***Do not answer any additional Issues.***

17. Did *plaintiffs* establish by a preponderance of the evidence that eMove and/or Web Team made any one or more of the description(s) of fact or representation(s) of fact you found false or misleading in Issue Nos. 2-3 with malice?

eMove: Yes \_\_\_\_\_ No ✓

Web Team: Yes \_\_\_\_\_ No ✓

***If you answered "Yes" as to one or both defendants in Issue No. 17, proceed to Issue No. 18.***

***If you answered "No" as to both defendants in Issue No. 17, do not answer any additional Issues.***

18. Did *plaintiffs* establish by *clear and convincing evidence* that:

- a. eMove made any one or more of the description(s) of fact or representation(s) of fact that you found to be false or misleading in Issue Nos. 2-3 with malice?

Yes \_\_\_\_\_ No \_\_\_\_\_

- b. Web Team made any one or more of the description(s) of fact or representation(s) of fact that you found to be false or misleading in Issue No. 3 only with malice?

Yes \_\_\_\_\_ No \_\_\_\_\_

***Proceed to Issue No. 19.***

19. Did plaintiffs establish by clear and convincing evidence that:

- a. eMove willfully or wantonly made any one or more of the description(s) of fact or representation(s) of fact that you found to be false or misleading in Issue Nos. 2-3 and, by a preponderance of the evidence, to be made with malice in Issue No. 17?

Yes \_\_\_\_\_ No \_\_\_\_\_

- b. Web Team willfully or wantonly made any one or more of the description(s) of fact or representation(s) of fact that you found to be false or misleading in Issue No. 3 only and, by a preponderance of the evidence, to be made with malice in Issue No. 17?

Yes \_\_\_\_\_ No \_\_\_\_\_

***Proceed to Issue No. 20.***

20. If you answered "Yes" as to a defendant in Issue Nos. 18 and/or 19 what amount of punitive damages, if any, does the jury award in its discretion against the defendant(s) for whom you answered "Yes" in response to Issue Nos. 18 and/or 19?

eMove: \_\_\_\_\_

Web Team: \_\_\_\_\_

